

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
DELTA DIVISION**

**STEWART GILBERT,  
ADC # 121590**

**PLAINTIFF**

**v.**

**Case No. 2:19-cv-00135-KGB-JTR**

**JAMES DYCUS, Warden,  
Brickeys Max Unit, ADC, et al.**

**DEFENDANTS**

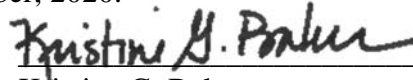
**ORDER**

Before the Court is a Recommended Disposition submitted by United States Magistrate Judge J. Thomas Ray (Dkt. No. 4). Also before the Court is plaintiff Stewart Gilbert's motion to dismiss (Dkt. No. 5). In his motion to dismiss, Mr. Gilbert contends that his complaint does not include a certificate of service nor has it been notarized by an Arkansas Department of Correction ("ADC") official (Dkt. No. 5). He contends that the complaint should not have been filed and that the filing fee should not have been charged to him (*Id.*). Mr. Gilbert also wrote a letter to the Court in which he claims that the complaint was not filed by him (Dkt. No. 6).

Under the Prison Litigation Reform Act ("PLRA"), a prisoner becomes responsible for the filing fee "the moment [he] brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529-530 (8th Cir. 1997). The Court must assess the filing fee, even if it dismisses the case prior to service. *See Williams v. Harmon*, 294 F. App'x 243, 245 (8th Cir. 2008) (holding that the trial court "was not authorized under the Prison Litigation Reform Act" to direct prison officials not to collect the filing fee for a case that was dismissed prior to service). The PLRA does not require a certificate of service nor notarization by an ADC official in order to file a complaint. Furthermore, the Court is not persuaded by Mr. Gilbert's claim that he did not file the complaint in this action. Accordingly, the Court denies Mr. Gilbert's motion to dismiss (Dkt. No. 5). The Court adopts the

recommended disposition submitted by Judge Ray as its findings in all respects (Dkt. No. 4). The Court dismisses without prejudice Mr. Gilbert's complaint (Dkt. No. 2). The dismissal counts as a strike, pursuant to 28 U.S.C. § 1915(g). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order would not be taken in good faith.

It is so ordered this 28th day of September, 2020.

A handwritten signature in black ink, appearing to read "Kristine G. Baker", written over a horizontal line.

Kristine G. Baker  
United States District Judge